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Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 285.

DAVID SARGEANT AND DANIEL F. SULLIVAN, ASSIGNEES OF DAVID SARGEANT, Appellants,

vs.

JOHN A. HELTON, SHERIFF OF ESCAMBIA COUNTY, ALA., RABB & MANN, AND OTHERS, APPELLEES.

Appeal from the Circuit Court of the United States for the Southern District of Alabama.

BRIEF OF H. A. HERBERT,

Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 285.

DAVID SARGEANT AND DANIEL F. SULLIVAN, Assignees of David Sargeant, Appellants,

vs.

JOHN A. HELTON, Sheriff of Escambia County, Ala., RABB & MANN, and Others, Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Alabama.

BRIEF OF COUNSEL FOR APPELLEES.

The object of the bill is to enjoin the appellees from proceeding with the execution of their judgments in the State Court, on the several grounds—that a sale of the lands under the judgments would throw a cloud on appellant's title, would probably lead to a multiplicity of suits, would create irreparable mischief, and that the *lien* of *plaintiff's attachments* had been *dissolved* by the *operation of section* 5044 of the *Bankrupt Act.*

The last ground was the only one which was pressed in the argument of appellant's counsel in the court below.

I.

The point of appellant's argument is, that *as the attachments were levied within four months prior to the appointment of the assignee,* the effect of the assignment was to transfer the property as of

the day of filing the petition, and that the attachments were dissolved, and the liens thereof discharged as of that date.

1st. The Court will observe in the first place, that this is not a suit by the Assignee to recover possession of the property, as assets to be administered by him under the order of the Court and according to the Bankrupt Act.

But the action is by a voluntary purchaser at Assignee's sale, which was had in another State than that where the attachment suits were pending and where the lands were situated.

2d. It must also be noted that the Assignee did *not* ask to be made a party to the attachment suits with a view to dismiss them, as the bill alleges, *until more than two years had elapsed after his appointment,* and section 5057 of the *Bankrupt Act limits his right of action in any form,* in the assertion of title, to the *period of two years.*

Besides, at that time, it appears that more than two years before the Assignee had sold at public sale and had conveyed, under orders of the Court, the title to the property thus levied on, so that all title or right of action in him, in reference to said property, had been extinguished. He had, therefore, no right whatever to become a party to the suits, or to remove them to the United States Court, or, in any manner, to intervene in them as Assignee. The sale of the property to Sargeant by the Assignee had been confirmed, and the bankrupt's assets were administered on by the Bankrupt Court before the motions were made in the State Court.

3d. Besides, it does not appear that the motion to dismiss was sustained by any proper pleading, or satisfactory evidence to the court that the Assignee had any authority to intervene as a party. There is no record of any proper pleading, or offer of evidence to the court, under which he was entitled to make the motion.

4th. The purchase of complainant was made while the attachment suits were pending, and before any steps were taken to defeat or remove the lien, which, by the laws of the State of Alabama, had been created by the levy of the attachments.

By the Code of Alabama of 1876, section 3280, it is provided that "the levy of an attachment creates a lien in favor of the "plaintiff upon the estate of the defendant so levied on from the "date of the levy."

This lien was kept up and perfected by judgments in favor of the plaintiffs, condemning the lands to the payment of the debts. It is not disputed that the court had jurisdiction of the parties and of the subject matter of the suits.

Having such jurisdiction it was the duty of the court to proceed with the cases, and there seems to be no tenable ground on which its judgments in the premises can be considered as void.

5th. Even if the Assignee had supported his motion by satisfactory evidence of the proceedings in bankruptcy, the judgment of the State Court would not be treated as void. The Assignee might have appealed to the Supreme Court of the State in such a case.

And if the State Court had failed to recognize his legal rights in the proper mode, he might have taken the case from the highest court of the State to the Supreme Court of the United States.

See Johnson vs. Bishop, Wool. 329, 330, citing 7 How. 612.

6th. It has been decided by the Supreme Court of the United States that the jurisdiction conferred upon the Federal courts for the benefit of an assignee in bankruptcy, is concurrent with and does not divest that of the State courts, in suits of which they had full cognizance.

The Assignee chose to let the attachment suits proceed without any other step on his part than those stated in the bill, and it is too late to object to the power of the State Court to act in the premises and render judgment. And that judgment having been rendered by a court of competent jurisdiction, and never having been modified by the court which rendered it, or by any court having authority to review its action, the Assignee cannot, at this day, call in question its validity.

As conclusive on the question that the judgments thus rendered in the State Court are valid, and that the liens created by the levy of the attachments remain and are not discharged by the bankruptcy proceedings, I refer to the following cases in the United States Courts:

Johnson vs. Bishop, Wool., 324.
Eyster vs. Goff, 91 U. S., 521.
Conner vs. Long, 104 U. S. (14 Otto), 234 and 240.
Doe vs. Childress, 21 Wall., 642.
Peck vs. Jenness, 7 How., 712.

As directly in point, I quote from the case of Conner vs. Long, 14 Otto, 234, which approves the following language of the court in 21st Wall., 642:

"Where the power of a State Court to proceed in a suit is "subject to be impeached, it cannot be done, except by the inter- "vention of the Assignee, who shall state the facts and make the "proof necessary to terminate such jurisdiction, and this rule "obtains whether the *four* months' principle is applicable or "whether it is not applicable."

The very basis of complainant's proposition is, that the bankrupt law, *ex proprio vigore,* avoids all judicial proceedings in the State, or other Courts, the instant one of the parties is adjudged a bankrupt. This view is expressly negatived by this Court.

In Savage vs. Best, 3 How., 111, it was held: the lien of a creditor obtaining judgment in the State Court, acquired by the delivery of a *fi. fa.* to the Sheriff, was not affected by the subsequent bankruptcy of the debtor before the levy was made. Notwithstanding the bankruptcy the Sheriff could proceed to levy and sell, and the purchaser would acquire a valid title, prevailing over any claim of the assignee. In Peck vs. Jenness, 7 How. 712, declaring the levy of an attachment created a lien, which was preserved by the bankrupt law, it was further held: the District Court of the United States, sitting in bankruptcy, could not interfere with, or oust the State Court from which the attachment issued, of jurisdiction to proceed to a judgment of condemnation of the property levied on, to the satisfaction of the lien. In Marshall vs. Knox, 16 Wall., 551, goods subject to a lien for rent under the statutes of Louisiana had been seized under process issuing out of a State Court, at the suit of the lessor before the bankruptcy of the lessee. It was held, that they could not on the bankruptcy of the lessee, be by the Court of bankruptcy taken, by rule, from the possession of the Sheriff and given to the assignee. In Doe vs. Childress, 21 Wall., 642, an attachment issuing out of a State Court, and levied more than four months before bankruptcy of the debtor, was declared a valid lien; and it was held, if the assignee permitted the creditor to proceed to judgment, and to a sale of the lands levied on, the purchaser in a case free from fraud would hold against him. In Eyster vs. Goff, 1 Otto, 521, (91 U. S.) pending a

bill for foreclosure of a mortgage, the mortgagor became bankrupt, and the cause proceeded to a final decree in a territorial Court of Colorado without the assignee intervening, or being made a party. It was insisted the decree was void, and the purchaser under it acquired no title. It was held by the Supreme Court, the bankruptcy did not affect the jurisdiction of the Court, and the assignee was bound by the decree as any other person acquiring title from the bankrupt *pendente lite,* would have been bound. The Court says: "It is a mistake to suppose that the bankrupt law avoids, of its own force, all judicial proceedings in the State or other Courts the instant one of the parties is adjudged a bankrupt. There is nothing in the act which sanctions such a proposition." Again, "The opinion seems to have been quite prevalent in many quarters at one time, that the moment a man is declared a bankrupt, the District Court which has so adjudged, draws to itself by that act, not only all control of the bankrupt's property and credits, but that no one can litigate with the assignee contested rights in any other court, except so far as the Circuit Courts have concurrent jurisdiction; and that other courts can proceed no further in suits of which they had at that time full cognizance; and it was a prevalent practice to bring any person who contested with the assignee any matter growing out of disputed rights of property, or of contracts, into the bankrupt court by the service of a rule to show cause, and to dispose of their rights in a summary way. This court has steadily set its face against this view. The debtor of a bankrupt, or the man who contests the right to real or personal property with him, loses none of those rights by the bankruptcy of his adversary. The same courts remain open to him in such contests, and the statute has not divested those courts of jurisdiction in such actions."

From these considerations it is evident that the right of defendants to have the fruits of their judgments, in the sale of the lands, under the orders of the Court, as the record shows, is absolutely and perfect. The lien created by the levy has never been transferred or lost, but is perfected and established by the judgments; and complainants have no right to question or assail the judgments. See 10 Peters, 449; 1 Otto, 521.

If the foregoing views be correct, complainants have no stand-

ing in this Court, for they have no right to set aside the judgment rendered in the State Court against the bankrupt debtor; nor to divest the lien or title of plaintiffs in those judgments.

Whatever may have been the rights of the assignee, they have been waived or abandoned by him.

7th. It is hardly necessary, then, to argue at any length the other equitable grounds on which the Bill rests. It will be sufficient to refer briefly to some leading principles, as to equity jurisdiction in such cases.

Complainants seek to injoin defendants *from proceeding with their judgment.*

The general principle underlying the jurisdiction in such cases is, that it must be against conscience to allow the execution of the judgment sought to be injoined.

In addition to this, the injured party must show either that he could not have availed himself of the facts which make it unjust in the court of law, or that he was prevented from so doing by fraud, accident or mistake, without negligence on the part of himself or his agents.

See 2 Story's Eq., § 887.

1 High on Injunctions, § 114.

It cannot be pretended here, that it is against conscience to allow those judgments to be executed, nor that complainants were prevented from making a defence to the attachment suits, by fraud, accident or mistake.

8th. The complainants were not parties to the suits, and had no right to intervene.

The assignee, under whom Sargeant claims title, did not avail himself of the legal means to interpose in the case, to prevent the judgments from being rendered.

First, he did not appear in the Court where the suits were pending until his right *was barred by the two years limitation* in the bankrupt act.

Revised Statutes, § 5057.

If the Circuit Court was wrong in refusing to allow him to be made a party, or to dismiss the suits, he had a right of appeal to the Supreme Court of the State, and from thence, if necessary, to the Supreme Court of the United States.

See Johnson vs. Bradley, Wool., 324.

9th. Besides the Bill does not show that the assignee presented the facts to the Circuit Court by proper pleading, which entitled him to make the motion.

See Doe vs. Childress, 21 Wall., 642.

Conner vs. Long, 14 Otto, 234; and cases referred to in the opinion.

10th. Again, it does not appear that the assignee took the proper steps to remove the causes from the State Court to the District Court of the United States. As a matter of fact, the Bill shows that he did not; for the motion was not made until about *three years after the issuance and levy of the attachments.* Besides, the law requires in such cases, that the application for removal should be made at the first term at which the cause could have been heard or tried. And this fact must affirmatively appear on the record, or be shown by the petition.

Aldridge vs. Couch, 11 Bissell, 180; 432

Citing 101 U. S. Rep., 610;

103 U. S. Rep., 606.

11th. In addition to the foregoing considerations, which deprive the complainants of all claim to the preventive relief they seek, is the further conclusive fact, that before these motions were made, the assignee, under order of the District Court, and by his own act had conveyed all right and title to the property in question, to one of the complainants, Sargeant. That fact appears on the face of the Bill. He had no right, therefore, to intervene in the cause for any purpose. The land had been sold, and the purchase money had been received by him, and the presumption is, the fund had been disposed of under orders of the District Court; so that, as to that matter, he was *functus officio.*

12th. But if all these facts had not occurred, that is, if *no sale had been made,* and the assignee were alone, as complainant, in this suit, he would have no equity to the relief sought.

His negligence in asserting his rights, would be a complete bar under section 5057 of the Revised Statutes.

13th. In view of the fact, that attachments had been levied on the property of the bankrupt, under the laws of the State, where the bankrupt had his residence, it was the duty of the assignee to determine, whether he would draw the property

within the jurisdiction of the Bankrupt Court, have the lien there adjudicated, or leave it to the creditor to proceed with his case, according to the practice of the State Court. He elected to take the latter course, and thereby waived any claim of a prior lien.

The order of the State Court condemning the lands to be sold, for the satisfaction of the attachment debts, was a proper judgment according to the law of the State, and fixes the lien of the plaintiffs on the lands in question, and effectually excludes the claim of the assignee, and of those claiming under him.

The judgment must stand until reversed by the appellate Court.

14th. As to the other alleged equities of the Bill, to remove a cloud from the title, &c., a few observations only will be made.

The complainant is in possession and alleges his own title to be clear and unquestionable; and while the defendants have no title at all, they have a right to execute their judgment in a sale of the lands. But whatever title the purchasers under the judgments, may acquire, the value of it, as evidence of title, is made apparent by the Bill. It depends wholly on the validity of the proceedings in the court of law, all of which appears on the face of the record. The rule in such cases is thus stated in High on Injunctions, 1 High, § 375:

"In the exercise of the jurisdiction for the prevention of "cloud upon title, a distinction is drawn between cases where the "invalidity or illegality charged as the cloud, is shown by "evidence *dehors* the record, and where it appears upon the face "of the proceedings themselves. And while in the former, the "relief is freely granted, in the latter, Courts of Equity will not "interpose. And where the cloud, which it is sought to remove, "can only be shown to be a good title, by leaving that of com-"plainant out of the question, an injunction will be refused."

On the theory of complainant, his defence is perfect at law. Besides, the complainant, Sullivan, (who seems now to be alone the complainant) purchased with a full knowledge of defendant's liens, and has no equitable claim to the interposition of this Court, for preventive relief.

15th. It is idle to discuss the question as to the fear of a multiplicity of suits, or of irreparable mischief because the possession of complainants cannot be disturbed except under

proceedings at law to try the title, where complainant is under no obstruction in having the benefit of his defence.

16th. The Bill is fatally defective for another reason. An injunction by a Federal Court to stay proceedings in any State Court is expressly prohibited in the Judiciary act of 1793, in the following provision: "The writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Revised Statutes, § 720.

No law can be shown relating to the proceedings in bankruptcy which authorizes the injunction in this case.

It is not issued by the Bankrupt Court, and is not sought to aid the administration of the bankrupt's estate; and the prayer of the Bill shows that it is for the protection and benefit of the complainant only.

While we consider that the decree of the Court below, in dismissing the Bill, must be affirmed on this ground alone if there were no other objection to the Bill, yet it is not desired to avoid a decision on the other questions raised in the cases.

It is for the interest of both parties, and is understood to be desired by both, that all the material matters of litigation be settled by the judgment of this Court.

H. A. HERBERT,
For Appellees.

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DANA SARGEANT ET ALS.
vs.
JOHN A. HILTON ET ALS.
No. 285.

In the Supreme Court of the United States.

SUPPLEMENT TO FORMER BRIEF OF APPELLEES.

The case of Chapman vs. Brewer reported, 114 U. S., 158, since the filing of my brief, makes it, perhaps, necessary to refer to what is decided in that case, and its bearing on the case at bar.

The case of Chapman vs. Brewer decides that an assignee in bankruptcy, being in possession of the bankrupt's land, can maintain a suit in equity in the Circuit Court of the United States to remove the cloud from his title, created by the levy of an attachment from a State court, and that that court could, under the exception in Rev. Stat., sec. 720, restrain by injunction a sale under the levy.

The two cases differ in several material particulars.

1st. In the case of Chapman vs. Brewer, the proceeding in bankruptcy was commenced before the attachment was levied. In the case at bar, the attachments in the State court were levied not only before the *adjudication* and the *assignment* in bankruptcy, but before the commencement of the proceedings in the District Court.

2d. But a more material difference lies in the fact, that in the case at bar the *assignee* is not the *complainant,* but a purchaser at the assignee's sale. By sec. 2 of the act of 1867, the Circuit Court of the district has jurisdiction of all suits in equity, *brought* by an *assignee* in *bankruptcy* against any person claiming an ad

verse interest, touching any property transferable to or vested in the assignee.

It seems to be very plain, that the jurisdiction of the United States Circuit Court, in such cases, can only be exercised at the suit of an assignee in bankruptcy, and then only where it relates to proceedings in bankruptcy, touching the assigned property. This jurisdiction exists by virtue of the act referred to and not otherwise.

The power of any court of the United States to issue an injunction to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy, is *expressly prohibited* in *Rev. Stat., sec.* 720.

In the case of Chapman vs. Brewer, pp. 170-71-72, these statutes are referred to for the purpose of showing that this jurisdiction of the Court was conferred to enable the *assignee* to obtain a title which would enable him to sell the land for the benefit of the estate.

In the case at Bar, the Bill shows that the duties of the assignee were at an end, and that the estate of the bankrupt had been sold and administered.

The Bill assumes the right in complainant, to exercise all the privileges and powers of the assignee; and to invoke the power of the Federal Court, to set aside and avoid, in his favor, the attachment, and the judgment thereon in the State Court.

This assumption is against the spirit and purpose of the bankrupt law; and the whole theory of the jurisdiction of the Federal Courts.

I refer again to what is said by the Court in Conner vs. Long, 104 U. S., 234, especially to the following sentence quoted from Doe vs. Childress, 21 Wall., 642,—"Where the power of a State "Court to proceed in a suit is subject to be impeached, it cannot "be *done, except upon an intervention by the assignee,* who shall "state the facts, and make the proof necessary to terminate such "jurisdiction"; and adding, "the rule gains, whether the four "months principle is applicable, or is not applicable."

H. A. HERBERT,
for Appellees.